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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE RICARDO GARIBAY,

Defendant and Appellant.

D074318

(Super. Ct. Nos. SCD266631,
SCD272271)

APPEAL from a judgment of the Superior Court of San Diego County, Leo Valentine, Jr., Judge. Remanded with directions to correct sentence, and in all other respects affirmed.

Anthony J. Dain, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Kathryn Kirschbaum and Michael Pulos, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Jose Ricardo Garibay guilty of two counts of attempted premeditated murder (Pen. Code, §§ 664, 187, subd. (a))¹ and one count of aggravated mayhem (§ 205), along with a finding on one of the attempted murder counts that Garibay personally inflicted great bodily injury (§ 12022.7, subd. (a)). Garibay admitted that he incurred a prior strike, which consisted of a juvenile adjudication. (§§ 667, subds. (b)-(i), 1170.12, 668.) After denying Garibay's motion to strike the prior strike, the trial court sentenced Garibay to four consecutive indeterminate prison terms of life with the possibility of parole and a determinate prison term of three years.

Garibay contends (1) because Garibay's prior strike was a juvenile adjudication without the right to a jury trial, the Sixth Amendment precluded its use to enhance his sentence in this case; and (2) the trial court abused its discretion in denying Garibay's motion to strike his prior strike because the court misunderstood the scope of its discretion. We conclude that neither of Garibay's contentions have merit. However, upon reviewing the record, we noted that the trial court imposed an unauthorized sentence by sentencing Garibay to four consecutive life terms with the possibility of parole for his two convictions for attempted premeditated murder, and we requested that the parties provide supplemental briefing on that issue. As the parties agree, the sentence for the two attempted premeditated murder counts should have been two terms of life with the possibility of parole, with parole eligibility after 14 years for each term. We will

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

accordingly direct that the trial court correct the judgment to reflect the proper sentence. In all other respects, the judgment is affirmed.

I.

FACTUAL AND PROCEDURAL BACKGROUND

During the middle of the day on April 17, 2016, Garibay drove up to a Rite Aid store and briefly interacted with a homeless man and woman who were outside of the store. Garibay then threw gasoline on the man and set him on fire. The man ran into Rite Aid with flames covering his body, where an employee put out the flames with a fire extinguisher. Garibay drove away from the scene, but was later located and arrested. The man was burned over 90 percent of his body, spent several months in a coma and underwent numerous surgeries.

While in jail on May 26, 2017, Garibay assaulted a fellow inmate in a recreation room. Garibay repeatedly hit the victim in the face, stomped on his head numerous times, and attempted to strangle him with a rolled up shirt. A video recording of the incident showed that Garibay struck the victim a total of 122 times and attempted to strangle him for 51 seconds. The victim's face was severely bruised and swollen, and clear fluid was observed coming out of his ear.

For the incident in front of Rite Aid, Garibay was charged with one count of attempted premeditated murder (§§ 664, 187, subd. (a)), one count of aggravated mayhem (§ 205), and one count of torture (§ 206). For the incident in jail, Garibay was charged with one count of attempted premeditated murder (§§ 664, 187, subd. (a)), with the further allegation that he personally inflicted great bodily injury (§ 12022.7,

subd. (a)). It was further alleged that Garibay incurred a prior strike (§§ 667, subds. (b)-(i), 1170.12, 668) consisting of a juvenile adjudication for armed robbery (§§ 211, 1192.7, subd. (c)(23), 12022, subd. (b)(1)).²

A jury convicted Garibay on all counts except for the count charging him with torture, and it made a true finding that Garibay personally inflicted great bodily injury in the jail incident. Garibay admitted his prior strike. At sentencing, the trial court denied Garibay's motion to strike his prior strike, and it imposed an indeterminate prison sentence of four consecutive life terms with the possibility of parole, and a determinate prison sentence of three years.

II.

DISCUSSION

A. *The Use of the Juvenile Adjudication as a Prior Strike Did Not Violate Garibay's Sixth Amendment Right to a Jury Trial*

We first consider Garibay's contention that the trial court was barred by the Sixth Amendment from using Garibay's prior juvenile adjudication for armed robbery as a prior strike. According to Garibay, because there is no right to a jury trial in a juvenile court proceeding in California, it violates a defendant's right to a jury trial to use a juvenile

² A prior juvenile adjudication constitutes a strike if the following conditions are met: "(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense. (B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a serious or violent felony. (C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law. (D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code." (§ 667, subd. (d)(3).)

adjudication under the Three Strikes Law as a prior strike to enhance a defendant's sentence.³

Garibay's argument is premised on "[a] series of United States Supreme Court decisions, beginning with *Apprendi v. New Jersey* (2000) 530 U.S. 466 (*Apprendi*), establish[ing] an adult criminal defendant's general right, under the Fifth, Sixth, and Fourteenth Amendments, to a *jury* finding beyond reasonable doubt of any fact used to increase the sentence for a felony conviction beyond the maximum term permitted by conviction of the charged offense alone." (*People v. Nguyen* (2009) 46 Cal.4th 1007, 1010 (*Nguyen*), citing *Oregon v. Ice* (2009) 555 U.S. 160, 162-164; *Cunningham v. California* (2007) 549 U.S. 270, 274-275; *Blakely v. Washington* (2004) 542 U.S. 296, 303-305; *Apprendi*, at p. 490) *Apprendi* held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Apprendi*, at p. 490, italics added.)

³ The People contend that Garibay has forfeited his constitutional challenge to the use of the juvenile adjudication as a prior strike because he did not raise the issue in the trial court and instead admitted that he had incurred a prior strike due to the juvenile adjudication. (*People v. McCullough* (2013) 56 Cal.4th 589, 593 [" ' ' 'a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it' " " "].) Garibay disagrees, presenting several grounds on which he contends that we should consider the merits of his Sixth Amendment argument, including that (1) defense counsel was ineffective for not raising a challenge below, and (2) the issue presented involves an important constitutional right. To forestall Garibay's ineffective assistance contention, we will exercise our discretion to address the issue that we would otherwise find to be forfeited. (*In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7 ["an appellate court may review a forfeited claim—and '[w]hether or not it should do so is entrusted to its discretion' "].)

As Garibay acknowledges, in *Nguyen* our Supreme Court considered and rejected the contention that *Apprendi* and its progeny bar a court from using a California juvenile adjudication as a prior strike to enhance a defendant's sentence under the Three Strikes Law. (*Nguyen, supra*, 46 Cal.4th at p. 1028 ["[T]he absence of a constitutional or statutory right to jury trial under the juvenile law does not, under *Apprendi*, preclude the use of a prior juvenile adjudication of criminal misconduct to enhance the maximum sentence for a subsequent adult felony offense by the same person."].) However, relying on recent opinions in *Descamps v. United States* (2013) 570 U.S. 254 (*Descamps*), *Mathis v. United States* (2016) 579 U.S. ___, 136 S.Ct. 2243 (*Mathis*), and *People v. Gallardo* (2017) 4 Cal.5th 120 (*Gallardo*), Garibay contends *Nguyen* is no longer controlling precedent because those cases "recognized an expanded or broader right to a jury trial on facts that can increase a defendant's sentence."

We reject Garibay's argument. As an initial matter, we note that in 2016, *after Descamps* and *Mathis* were decided, our Supreme Court expressly declined to reconsider its holding in *Nguyen* that "juvenile adjudications [are] inadmissible as prior convictions under *Apprendi* . . . and its progeny." (*People v. Landry* (2016) 2 Cal.5th 52, 117, fn. 18.) In addition, *Descamps* and *Mathis* do nothing to undermine the premise of our Supreme Court's holding in *Nguyen* because they did not concern the permissibility of using *the fact* that a defendant incurred a juvenile adjudication to enhance a defendant's sentence for a subsequent crime. Instead, those cases strictly prohibited factfinding by the sentencing court *beyond* the fact of a prior conviction. Specifically, *Descamps* and *Mathis* interpreted the federal Armed Career Criminal Act (ACCA; 18 U.S.C. § 924(e))

and applied *Apprendi's* Sixth Amendment limits on judicial factfinding to determine the extent to which a sentencing court could make findings to determine if a prior conviction qualified as a predicate offense to enhance a subsequent sentence under the ACCA. (*Descamps, supra*, 570 U.S. at p. 257; *Mathis, supra*, 136 S.Ct. at p. 2248.) In both cases, the Supreme Court concluded that the sentencing courts were generally barred from looking beyond the statutory elements of the prior offenses to determine whether the defendant's conduct qualified for imposition of a sentence enhancement under the ACCA. (See *Descamps*, at pp. 259, 268-269 [the sentencing court impermissibly relied on the record of a plea colloquy in finding that the defendant's prior conviction for burglary involved unlawful entry]; *Mathis*, at p. 2250 [the sentencing court impermissibly relied on records of a prior conviction to determine that the defendant had burglarized structures, rather than vehicles].) In *Gallardo*, our Supreme Court reevaluated its prior precedent in *People v. McGee* (2006) 38 Cal.4th 682, in light of *Descamps* and *Mathis*, holding that it was no longer permissible for "trial courts to make findings about the conduct that 'realistically' gave rise to a defendant's prior conviction. The trial court's role is limited to determining the facts that were necessarily found in the course of entering the [prior] conviction." (*Gallardo, supra*, 4 Cal.5th at p. 134.) However, *Gallardo* also did not concern whether it is permissible to use a juvenile adjudication as a prior strike.

Thus, although *Gallardo*, *Mathis* and *Descamps* all disapprove judicial factfinding by a sentencing court to determine whether the defendant suffered a qualifying prior conviction when that issue is unclear from the fact of the conviction itself, none of those

cases call into question *Nguyen's* holding that a sentencing court may impose a sentence enhancement based on a prior juvenile adjudication, despite the lack of right to a jury trial in that proceeding. As *Nguyen* remains good law, we are bound to follow it and to reject Garibay's argument that the use of his prior juvenile adjudication as a prior strike violated his Sixth Amendment right to a jury trial. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

B. *The Trial Court Did Not Abuse Its Discretion in Denying the Motion to Strike Garibay's Prior Strike*

At sentencing, the trial court considered and denied Garibay's motion to strike his prior strike, or in the alternative to strike the strike as to only one of the attempted premeditated murder convictions.⁴ According to Garibay, the trial court's statements at the sentencing hearing show that it misunderstood the scope of its discretion to strike a prior strike that it determined would result in an excessive sentence. Garibay argues that the trial court's order denying the motion should accordingly be reversed.

A trial court may strike a prior felony conviction allegation in a case prosecuted under the Three Strikes law when such an order is "in furtherance of justice." (§ 1385, subd. (a); see *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529-530.) "[T]he law creates a strong presumption that any sentence that conforms to [its] sentencing norms is both rational and proper." (*People v. Carmony* (2004) 33 Cal.4th 367, 378 (*Carmony*).) In deciding whether to strike prior conviction allegations, the court

⁴ "[A] trial court has discretion in a Three Strikes case to strike prior conviction allegations on a count-by-count basis." (*People v. Garcia* (1999) 20 Cal.4th 490, 499 (*Garcia*).)

"must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*).)

We review a trial court's refusal to strike prior conviction allegations for abuse of discretion. (*Carmony, supra*, 33 Cal.4th at p. 375.) "[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Id.* at p. 377.) "Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

In his motion to strike his prior strike, Garibay argued, among other things, that it was in the interest of justice for the trial court to grant relief because (1) his 2007 prior strike was remote in time and occurred when he was a juvenile; (2) his crimes were the result of a mental illness and drug use; and (3) his prior crimes committed as an adult are misdemeanors and many were committed while he was under the influence.

At the sentencing hearing, the trial court gave the following explanation for its ruling denying the motion to strike the strike.

"As it relates to the sentencing in the matter, whether or not the Court should strike the strike, I can tell you that, as I've just said, four life terms versus two life terms, I'm not sure that, as it relates to Mr. Garibay himself,

that it makes a difference in the long term, in the long run. *It seems to be excessive from the Court's perspective, but the legislature's indicated that that's not a legal reason for the Court to strike a strike because the Court thinks that the sentence is excessive. That has been the public's will, that has been the legislature's dictate to the Court, and so the question becomes can the Court find a legal justification to strike Mr. Garibay's juvenile prior.*

"And as I looked at that, it was of moment to the Court that it appears to have been a robbery, as indicated, used with a knife. He successfully complete probation, but what stood out to the Court was that he was sentenced to I think it was a juvenile detention for 365 days, but that was stayed which means that he didn't serve that time. He was given several days of Public Work Service. And it appears to the Court that if it was a very serious offense, that the Court would have felt compelled to at least place him through some rehabilitation programs other than Public Work Service. And so I'm not sure how aggravating that crime in and of itself was.

"But that is the part of the history that the Court's considered in trying to determine whether or not that sentence suggests that it is an offense that should or should not be held against him for the rest of his life.

"I'm also aware that the—the juvenile justice system has changed recently, the Proposition 57, that our neuroscience is showing us that adolescent's brain development does not complete until they're in their mid 20s, that their frontal lobe where they're able to make these decisions that adults makes and differentiate between impulsive behavior and calculating consequences of what they do are all things that we are learning more and more about, and it's changing our law which suggests that we do the best we can as a society to address the wealth of behavior of citizens, but we learn as we grow as a civilization, and hopefully what we learn will help us in the future to try to head off this type of conduct.

"And I recognize that Mr. Garibay was a juvenile at the time of that offense. Although a couple months later, he would have been considered as an adult. And I struggled with the things as the Court because if, in fact, neuroscience shows us that the brain is not fully developed until we're in our mid-twenties and why we suggest that we're adults when we turn 18, there's no magic thing that happens from one day to the next when you're 17 years old and 364 days and the next day all of a sudden you are an adult.

You're still developing with your brain. But perhaps in the future we will evolve to take these things into consideration.

"But other than that particular fact, as I said, he did Public Works Service for that offense. Given his conduct since that, the Court does not find any legal justification to strike Mr. Garibay's strike, and so for that reason, I deny the request to do so." (Italics added.)

Focusing on the italicized portion of the first paragraph of the trial court's statement, Garibay contends that the trial court abused its discretion because it did not understand that it had the discretion to strike a strike when it determined that the resulting sentence would be unjust because it was excessive. Specifically, Garibay contends the trial court demonstrated its misunderstanding by stating that a sentence of four life terms "seems to be excessive from the Court's perspective, but the legislature's indicated that that's not a legal reason for the Court to strike a strike because the Court thinks that the sentence is excessive."⁵ Garibay contends that this statement of the law was incorrect because a trial court may exercise its discretion to strike a strike when it determines that a

⁵ As we will explain in section II.C., *post*, the trial court was under the mistaken belief that the proper sentence under the Three Strikes law for Garibay's two convictions for attempted premeditated murder was two life terms with the possibility of parole, doubled to four life terms with the possibility of parole due to Garibay's prior strike. The trial court's comment that the sentence was "excessive" was accordingly based on that premise. We note that earlier in the sentencing hearing the trial court questioned whether a sentence of four life terms made any practical difference, and this concept may have been what the trial court was referring to when stating that it believed a sentence of four life terms was "excessive." Specifically, the trial court stated, "But just, for the record, two life terms versus four life terms, the reality in terms of protecting the community, do you think he'll ever get out with two life terms?" The trial court also observed, "The reality here is, from the Court's perspective, I'm not sure whether it makes a difference whether it's four life terms or two life terms. It just does not appear to the Court that he will ever get out unless [the] parole board is completely satisfied that he is no threat to the community, and if not, if he's eligible, he can also be sent to Atascadero, Patton to be dealt with as a mentally disordered offender."

sentence is unjust because it is excessive. As we will explain, we reject Garibay's argument because a trial court has discretion to strike a strike that would result in a sentence that is excessive based on the *defendant's* particular history and circumstances, not based on a *general* belief that the legislature provided an excessive sentence under the Three Strikes Law.

As an initial matter, as we understand the trial court's statement, when it observed that the sentence of four life terms was "excessive," it was *not* commenting on whether such a sentence was excessive *in the context of Garibay's history and circumstances*. Instead, as we understand the trial court, it was expressing its disagreement with the application of the Three Strikes Law in a case where a defendant has been convicted of two crimes, both of which carry life terms with the possibility of parole. We perceive the trial court to have been stating that four life terms (which it erroneously understood to be the sentence required by the Three Strikes law in this case) was *generally* an excessive sentence in any circumstance. However, as the trial court correctly observed, the fact that it disagreed with the sentence required by the Three Strikes Law *in general* is not a proper basis to strike a defendant's strike. "[A] court may not dismiss a strike solely . . . based on antipathy to the Three Strikes law. Instead, in determining whether to strike a prior conviction, the trial court must look to 'factors intrinsic to the [Three Strikes] scheme.' . . . It 'must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not

previously been convicted of one or more serious and/or violent felonies.' " (*People v. Johnson* (2015) 61 Cal.4th 674, 688-689, citation omitted; see also *People v. McGlothin* (1998) 67 Cal.App.4th 468, 477 [the trial court erred when it "simply concluded that life in prison was too harsh a penalty" for the crime at issue under the Three Strikes Law because "[t]he Legislature has concluded otherwise," and although "[t]he court is certainly entitled to its opinion," "[i]t is not entitled . . . to impose that individual opinion in lieu of the law of the State of California"].) "Personal antipathy for the law or a belief the law is unwise is not a justification for striking priors to avoid its application. . . . Rather, a decision to strike an admitted serious/violent felony conviction must be based on those considerations as would motivate any reasonable judge to make such decision." (*People v. Smith* (1996) 50 Cal.App.4th 1194, 1197-1198.)

Here, after making the *general* observation that it disagreed with the particular aspect of the Three Strikes sentence it believed was required here, trial court appropriately turned to the specific circumstances of Garibay's case. The trial court performed a proper analysis based on Garibay's particular history and circumstances to conclude that Garibay did not fall outside the spirit of the Three Strikes Law and that justice did not require that the trial court strike Garibay's prior strike. For this conclusion, the trial court properly relied on the fact that Garibay continued to commit crimes after he incurred his juvenile adjudication, stating that "given his conduct since [his juvenile

adjudication], the Court does not find any legal justification to strike Mr. Garibay's strike.⁶

In sum, the record shows that the trial court correctly understood the scope of its discretion in ruling on Garibay's motion to strike his prior strike. We accordingly reject Garibay's contention that the trial court committed an abuse of discretion in denying his motion.

⁶ In arguing that the trial court had the discretion to strike a prior strike to avoid an excessive sentence, Garibay appears to rely on a statement by our Supreme Court in *Garcia, supra*, 20 Cal.4th at p. 500, made in the course of explaining that a court may strike prior conviction allegations *on a count-by-count basis* if the resulting sentence would otherwise be excessive. In the course of its analysis, *Garcia* observed that "a defendant's sentence is also a relevant consideration when deciding whether to strike a prior conviction allegation; in fact, it is the overarching consideration because the underlying purpose of striking prior conviction allegations is the avoidance of unjust sentences." (*Ibid.*) However, *Garcia* also made clear that the excessive nature of a sentence may be considered *only if*, based on the factors discussed in *Williams, supra*, 17 Cal.4th at p. 161, the defendant falls outside the spirit of the three strikes scheme, in whole or in part. As *Garcia* stated, "When a *proper basis exists* for a court to strike prior conviction allegations as to at least one current conviction, the law does not require the court to treat other current convictions with perfect symmetry if symmetrical treatment would result in an unjust sentence." (*Garcia*, at p. 500, italics added.) Here, because the trial court concluded that Garibay did not fall outside the spirit of the Three Strikes scheme, it had no discretion to strike Garibay's prior strike based solely on its belief that the Three Strikes sentence was excessive.

C. *The Trial Court Imposed an Unauthorized Sentence for the Two Attempted Premeditated Murder Convictions*

Finally, we address the trial court's error in imposing a sentence of four consecutive life terms with the possibility of parole for Garibay's commission of two counts of attempted premeditated murder.

The Penal Code prescribes a sentence of life with the possibility of parole for the crime of attempted premeditated murder. (§ 664, subd. (a) ["if the crime attempted is willful, deliberate, and premeditated murder . . . , the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole"].) The Three Strikes law provides that when a defendant has incurred a prior strike, "the . . . minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction." (§ 667, subd. (e)(1).)

At the sentencing hearing, based on the recommendation set forth in the probation officer's report, and the concurrence of the prosecutor in that recommendation, the trial court concluded that as a result of Garibay's prior strike, it was required to double the life terms for each of Garibay's convictions for attempted premeditated murder, for a total indeterminate sentence of four life terms with the possibility of parole. The trial court also imposed a determinate term of three years for the finding that Garibay personally inflicted great bodily injury (§ 12022.7, subd. (a)). The abstract of judgment accordingly sets forth the following sentence: "Total Term: 3 Years PLUS Life With The Possibility Of Parole x4."

However, as the parties agree in their supplemental briefing, the trial court erred in imposing four life terms for the two convictions for attempted premeditated murder. As our Supreme Court established in *People v. Jefferson* (1999) 21 Cal.4th 86, 96 the proper application of the Three Strikes law when a defendant with a prior strike commits one crime punishable by life in prison with the possibility of parole is to impose a single life term but to double the minimum period of parole eligibility as specified in section 3046. (*Jefferson*, at p. 96 ["the minimum term for a defendant found guilty of attempted premeditated murder is found not in section 664 but in section 3046. The parole ineligibility period set by section 3046 is a minimum term within the sentence-doubling language of section 667[, subd.] (e)(1)".]) Unless another provision specifies a longer period, section 3046, subdivision (a)(1) requires that an inmate imprisoned under a life sentence becomes eligible for parole only after serving a minimum of seven calendar years. Accordingly, based on *Jefferson*, a defendant with a prior strike who commits a crime punishable by life with the possibility of parole should be sentenced to a life term with parole eligibility after a minimum of 14 years.

Here, because Garibay committed two counts of attempted premeditated murder, both of which are punishable by a term of life with the possibility of parole, he should have been sentenced to two consecutive life terms, each with parole eligibility after a minimum of 14 years, along with a determinate term of three years for the finding that he personally inflicted great bodily injury.

DISPOSITION

The matter is remanded with directions that the trial court correct the sentence imposed for the two counts of attempted premeditated murder to provide, as to each count, a consecutive sentence of life with the possibility of parole, with parole eligibility for each count in a minimum of 14 years. In all other respects the judgment is affirmed. The trial court shall forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

IRION, J.

WE CONCUR:

O'ROURKE, Acting P. J.

DATO, J.